IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CRL.A.No. 2191 of 2004(D)

SC.1048/2003 of II ADDL. SESSIONS COURT, TRIVANDRUM
CP. 91/2003 OF JUDICIAL FIRST CLASS MAGISTRATE-II, ATTINGAL
CR. NO.326/02 OF VENJARAMOODU POLICE STATION).
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APPELLANT:

KRISHNA PILLAI @ UNNI,
S/O.KUMARA PILLAI,
C.NO.8633, CENTRAL PRISON,
THIRUVANANTHAPURAM-695 012.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

STATE OF KERALA,
REP: BY THE PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBEL MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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J.B.KOSHY & K.HEMA, JJ.

Crl.A.No.2191 OF 2004

Dated 6th September, 2007

JUDGMENT

Koshy,J.

Appellant/accused was convicted and sentenced under Section 302 of the Indian Penal Code for causing death of his wife Saraswathi Amma. Prosecution allegations as summarised by the trial Judge as follows:

> "The prosecution allegation is that on 25.9.2002 at about 10 a.m., the accused with the intention of causing death of Saraswathi Amma and with the full knowledge that his acts would cause the death of Saraswathi Amma attempted to attack Saraswathi Amma and at that time, she ran in fear of death and entered into the house of PW2, Sarojini Amma, bearing House No.M.P. X/125 situated in Manikkal Village and at that time, the accused had thrown a stone on Saraswathi Amma which hit on her and thereafter, the accused chased her to the house of PW2 and trespassed into the said house and stabbed on the left chest of Saraswathi Amma above her nipple with a pen-knife and thereafter the accused stabbed on the left hand of Saraswathi Amma with the same pen-knife and again the accused stabbed on the neck and back side of Saraswathi Amma so many times in quick succession with the same pen-knife. The injuries inflicted by the accused were sufficient in the ordinary course of nature to cause the death of Saraswathi Amma and Saraswathi Amma succumbed to the injuries at about 1 p.m. on the same day while undergoing treatment in the Medical College Hospital, Thiruvananthapuram.

> On the said allegations, the police laid the charge before the court for the offences under Sections 449 and 302 I.P.C. The motive for the incident is that the deceased entrusted the wiring of her house with another person even though the accused was also a wireman."

PW1 deposed that hearing cry of PW2, at about 11 a.m. on 25.9.2002, she reached the house of PW2. At that time, she saw Saraswathi Amma lying in a pool of blood in the house of PW2. She was taken to the hospital where she succumbed to the injuries at 1 p.m. on the same day. PW1 gave Ext.P1 statement. PWs 2 to 4 and 6 also found Saraswathi Amma lying in the house of PW2 at about 10.30 a.m. on 25.9.2002 in a pool of blood after sustaining injuries. PW5 is the son of Saraswathi Amma. According to him, he has gone to school on the fatal day. At about 11 a.m. he got information that his mother has sustained stab injuries and she succumbed to the injuries in the Medical College Hospital, Thiruvananthapuram. PWs 1, 3 and 4 accompanied Saraswathi Amma to the hospital in a car and she succumbed to the injuries while undergoing treatment in the hospital at 1.p.m. PW2 was cited and examined as a solitary eye witness, but, she did not support the prosecution version. She deposed that while she was on the back side of the house, she heard a cry from her house. Immediately, she rushed to the place, she saw Saraswathi

Amma lying in a pool of blood inside her house and Saraswathi Amma stated to her that she was stabbed by `Chettan', i.e., her husband. PW2 is having acquaintance with the accused for the last 20 years and evidence of PW2 would further show that nobody else was in her house at the time of occurrence. Apart from the deceased, she also saw the accused rushing out of the house. She also deposed that she had seen MO2, a pair of chappals, in her house, which was later identified by PW5, son of the deceased, as belonged to the accused. Even though she was declared hostile, she proved the dying declaration of the deceased that her husband killed her. PW3 also stated before the police that Saraswathi Amma uttered many times that she was stabbed by `Chettan'. PW4 was one of the persons who accompanied Saraswathi Amma to the hospital. PW4 stated that Saraswathi Amma told him that she was stabbed by `Chettan' and he also stated that the accused was called by name `Chettan'. PW5, son of the deceased, deposed that the accused used to torture his mother physically. He also deposed that his mother Saraswathi Amma was working as a Nurse, but, due to the torture by the accused she could not continue her employment and accused never used to spend any money for the livelihood of himself and his mother. He further deposed that the accused was a habitual drunkard and he always used to keep MO1 knife with him. MO2 chappals belonged to the

accused and MO3 chappals belonged to Saraswathi Amma were also identified by him. PW6 even though declared hostile also deposed that hearing the cry he rushed to the house of PW2 and at that time accused was going out of the house.

2. MO1 knife was recovered as per the recovery mahazar (Ext.P10) and Ext.P10(a) disclosure statement. Ext.P12 is the Forensic Report. MO1 Knife contained human blood. Even though blood group of the deceased was `O', it was found that the group of blood found in the knife was `A' as per the FSL report. But, later it was clarified by the court witness (CW1) that actually it was due to a mistake in examination and it contained `O' group blood. It has come out in evidence that the accused and deceased were in that house. It was also proved that several witnesses, when rushed to the place hearing cry of the deceased, have seen the accused going out. Dying declarations of the deceased heard by various persons also show that she was killed by the accused. The recovery of chappals from the house of PW2 where the incident occurred and which was identified by his own son also shows presence of accused at the time of occurrence. Pen knife which was identified as that of the accused by the son was recovered as per the disclosure statement which is admissible under Section 27 of the Evidence Act. All these evidence

read together will show that the accused is guilty and accused alone is guilty. We fully agree with the findings of the trial judge and no interference is required in the conviction and sentence passed against the appellant.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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